

EUGENE P. TISCORNIA, SR.  
MARGARET TISCORNIA

IBLA 70-37

Decided December 30, 1970

Mining Claims Occupancy Act: Principal Place of Residence

A case appealed to the Secretary of the Interior from a rejection of an application under the Mining Claims Occupancy Act may be remanded for a hearing if the record is vague, uncertain and inconclusive as to the nature and extent of occupancy of the mining claim.

IBLA 70! 37

: Sacramento 608

EUGENE P. TISCORNIA, SR., AND  
MARGARET TISCORNIA

: Mining Claims Occupancy

: Application Rejected

: Set aside, case remanded  
for hearing

### DECISION

Eugene P. Tiscornia, Sr., and Margaret Tiscornia have appealed to the Secretary of the Interior from a decision dated February 17, 1969, in which the Office of Appeals and Hearings, Bureau of Land Management, affirmed a decision of the Sacramento, California, land office rejecting their application, Sacramento 608, filed pursuant to the Mining Claims Occupancy Act of October 23, 1962, 30 U.S.C. §§ 701-709 (1964), as amended (Supp. V, 1970).

On May 24, 1967, appellants filed their application to purchase a portion of the Madaline Quartz mining claim located in Sec. 6, T. 3 S., R. 17 E., M.D.M., Stanislaus National Forest, Mariposa County, California. They asserted in their application that the location of the Madaline Quartz mining claim was recorded in the Mariposa County records July 21, 1931, and amended January 22, 1939, by C. G. Cunningham. Appellants also asserted there were considerable improvements on the claim, that C. G. Cunningham had lived in a cabin on the claim from July 1931 to September 1959, and they had occupied and possessed the improvements thereafter from September 1959 through October 23, 1962. Appellants filed a relinquishment of the mining claim June 28, 1967.

The land office rejected appellants' application, concluding that they had used the claim only during vacations and weekends and had not occupied the claim as a principal place of residence as required by the act of October 23, 1962. The land office decision was based upon a field investigation report of the Forest Service, U.S. Department of Agriculture. This indicated that the appellants never used the claim as a principal place of residence, but occupied it only intermittently, although

year-round occupancy was possible. They apparently maintained a home in Stockton, California, which was both their voting and mailing residence.

In their appeal to the Director, Bureau of Land Management, appellants contended they had used the Madaline Quartz claim as a principal place of residence since 1959, when they purchased the claim from C. G. Cunningham. They asserted that C. G. Cunningham and his father had lived on the claim for approximately 80 years. They maintained they had made extensive improvements on the claim and "spend on an average, when the road permits, approximately two (2) weeks out of every month during the year except during the rainy portion of the winter season." Appellants stated that occupancy of the claim is beneficial to Mr. Tiscornia's health.

The Office of Appeals and Hearings, in affirming the land office decision, found that appellants had not used the claim as a principal place of residence. It determined that appellants' occupancy was limited because a poor road rather than adverse weather conditions made it impractical to live on the claim on a year-round basis.

In this appeal to the Secretary of the Interior, appellants have presented the same arguments as made below and further contend they were not given an opportunity to examine the individuals who made a field investigation of the residents in the area and, therefore, have not had their day in court.

Appellants have not specifically requested that their case be assigned to a hearing examiner for a full hearing on the issue of their use of the Madaline Quartz mining claim as their principal place of residence. An applicant under the Mining Claims Occupancy Act is not entitled to a hearing as a matter of right. United States v. Walker, 409 F.2d 477 (9th Cir. 1969). However, the Board of Land Appeals may, on its own motion, order a hearing in cases of this nature where there exists a disputed question of fact which cannot be satisfactorily resolved from the record. 43 CFR 1843.5, 35 F.R. 10010.

A careful review of the record before us reveals that the information contained therein is vague, uncertain and

inconclusive as to the nature and extent of appellants' occupancy of the claim. This precludes us from reaching a decision in the matter. Therefore, we are of the opinion that the ends of justice would best be met by referring the case for hearing.

At the hearing each party should endeavor to present competent evidence to substantiate his respective position. The basic issue to be resolved is the nature and extent of appellants' occupancy of the claim.

The record in this case is transmitted to the Hearings Division, Sacramento, California, pursuant to this decision. Upon completion of the hearing and incorporation of the summary or transcript of the evidence, the examiner will return the record, the proposed findings of fact and his recommended decision to the Board of Land Appeals for further consideration and decision. 43 CFR 1851.9, 35 F.R. 10011.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision below is set aside and the case is referred to the Hearings Division, Sacramento, California, for proceedings consistent with this decision.

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Francis E. Mayhue, Member

I concur:

I concur:

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Newton Frishberg, Chairman

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Anne Poindexter Lewis, Member

